

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7179 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BALCHANDRA C PARMAR

Versus

STATE OF GUJARAT

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Appearance:

MR PR ABICHANDANI for Petitioner

MR ANANT S DAVE for Respondent No. 1 to 3.

MR RJ OZA for Respondent No. 4

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 25/01/99

ORAL JUDGEMENT

Mr. Abichandani places on record copy of the order dated 25th August, 1998. Heard learned advocates for the parties. Rule returnable today. Mr. Dave, the learned Addl. Government Pleader appears for and waives service of rule on behalf of the respondents Nos. 1 to 3. Mr. Oza, the learned advocate appears for and waives service of rule on behalf of the respondent No. 4.

2. The petitioner herein is a qualified Doctor serving as Medical Officer Class-I under the State Government. The petitioner was appointed as such on 17th June, 1983 on ad-hoc basis and by way of stopgap arrangement for a period of one year or till the person selected by the Gujarat Public Service Commission ( hereinafter referred to as "the GPSC") was made available, whichever be the earlier. It appears that during the period of his appointment, no regularly selected person was available and the petitioner's service was continued after the expiry of period of one year by issuing further order of ad-hoc appointment on the same terms and conditions. The petitioner has, thus, continued in service on ad-hoc basis and by way of stopgap arrangement till the date. During his service, in the year 1991, the petitioner applied to the GPSC for regular selection. The GPSC after going through the recruitment, did not select the petitioner. The petitioner, thus, having failed to be regularly selected by the GPSC, was liable to be discharged from service. However, though the communication of the GPSC was received by the State Government in the year 1995, no action was taken pursuant to the said communication till August, 1998 when the impugned order was made seeking to discharge the petitioner from service and some others who had failed to be selected by the GPSC. It does appear that several posts of Medical Officer Class-I are still vacant. Mr. Dave has informed the Court that as many as 116 vacancies have been requisitioned on 22nd August, 1998 pursuant to which fresh recruitment shall have to be made.

3. I am of the view that since the petitioner was appointed on ad-hoc basis by way of stopgap arrangement, he has no right to continue on the post in question. More so because the petitioner had taken competitive examination given by the GPSC and has failed. The petitioner having failed at the GPSC Selection Procedure, he has no right to continue even on ad-hoc basis even though vacancy might be available. However, on the facts of the present case, the service of the petitioner is required to be protected because ;

- (a) the petitioner has been serving as Medical Officer, Class-I for nearly 17 years;
- (b) for a long time i.e. since 1983 to 1991, no Selection Procedure had taken place;
- (c) though the Selection Procedure had been initiated in the year 1991, results thereof were declared

in the year 1995 i.e. nearly four years from the date of the advertisement;

- (d) though the petitioner was declared failed at the GPSC Selection Procedure in the year 1995, he has been continued in service till the year 1998;
- (e) even on the date of his discharge from service, several vacancies of the cadre of Medical Officer, Class-I are available.

4. For the reasons recorded hereinabove, the impugned order dated 25th August, 1998 is quashed and set aside quae the petitioner alone. The petitioner shall be continued in service till the Medical Officer, Class-I regularly selected by the GPSC is made available. This order shall not protect the services of the petitioner if the petitioner does not apply for selection by the GPSC or is not found to be eligible for such selection or fails at such examination. This order shall also not protect the service of the petitioner in case he is found to have committed any misconduct. Petition is allowed to the aforesaid extent only. Rule is made absolute accordingly. There shall be no order as to costs.

25.1.1999. (Ms. R.M.Doshit,J.)

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